1913-14
(Courts)

File no - 176.13
1 - 16

Irregular drill of an orderly of the 108 Infantry, Bangalore Brigade by the city magistrate, Bangalore

Previous references.

CS 34-04 (1-2) B
CS 39-04 (1-4) B
CS 75-06 (1-3)

Later references.

L-233-13 (1-7)

1903. 14
(CS)

File No. 176-13
Serial Nos. 1-16

GENERAL AND REVENUE SECRETARIAT.

Serial Nos. 1-16

Part B. for July 14.

SUBJECT.

Irregular trial of an orderly of the 108 Infantry, Bangalore Brigade, by the City Magle, Bangalore

1. From The J.A. Regt 259 of 10/1/14
Forwards copy of a letter from the Station Staff Officer B/ Brigade, in the matter.
2. To The Dy. Bg. J 2034 of 23/1/14.
Calls for an early report in the matter
3. From The Dy Bg. 616 of 10/12/2/14.
Forwards the records of the case alongwith a copy of a letter from the City-Magle
4. To Mr B.S. Rangoji Rao City Magle 2365 of 17/2/14
Asks him not to disburse the amount of fine to the Complainant until further orders

G. R. S. 58

14.10.14

P.T.O.

5 — To the D. M. Bf. 2690 of 16/3/14.
states that the conviction of the Sepoy appears to be illegal & request to make a reference to the Chf Ct

6. To the F. A. Resdt 757 of 25/3/14
states that the D. M. Bf has been requested to refer the matter for the order of the Chf Ct.

7. From the D. M. Bf. Dt 798 of 30/31/3/14
Makes further representation in the matter of the trial of Sripathi Havali stating that it is more proper to move the Chf Ct for a reduction of the fine

8. To the D. M. Bf 2924 of 8/4/14
states that the matter by the Chf Ct is desirable & requests him to give effect to the instruction

9. From the F.A. Resdt 2434 of 7/4/14
states that the Resdt would be obliged if the Chf Ct cd be moved to treat the case as very urgent

10. To the D. M. Bf. 2968 of 15/4/14
Requests him expedite the ref to the Chf Ct.

11. To the Govt Adv. 29690/15/4/14
Requests him to move the Chf Ct to expedite the consideration of the reference

12. From the Govt Adv 265 of 15/4/14
states that the result will be intimated in due course

13. From the Dm Bf. 839 of 15/4/14.
states that the ref in question was made to the Chf Ct

14. From the Govt Adv. 384 of 20/6/14
states that the case was disposed of.

15. —do— 341 of 24/6/14
Forwards a copy of the order passed by the Chf Ct.

16. To the F. A. Resdt 609 of 2/7/14
Intimates as in Sl. No. 15.

G.R.S. 111 — 1913 - 14 — 4179

GENERAL AND REVENUE SECRETARIAT

(Courts...)

NOTES.

176

File No. 4/1913 - 14

FILE HEADING.

Irregular trial of an orderly of the 108th Infantry Bangalore Brigade by the City Magistrate of Bangalore

From

The H A Rendrait

No. 259 Dated 10.1.14 Received 10/13 1.14

Diary No. J2133.	Enclos 3 Spare Copies.	Serial No

BRIEF ABSTRACT OF LETTER.

Forwards copy of a letter from the Station Staff Office Bangalore Brigade, in the matter and states that the Hon'ble the Resident would be glad to be informed of any action which the Durbar may see fit to take.

NOTES AND ORDERS

Flag S

Amended by Notif 12.11.06 & S.M. 05233-13

According to the terms of notif No J 418, 8 dt 8th Aug 05 the courts of the State have no jurisdiction over a native officer or soldier of the Durbar Army who while not on leave commits any kind of offence in Mysore. The accused connected in the

NOTES—First Sheet.

Read 8/10/14

GPB—35,000—15 6-12

Vide para 4 of letter flagged V

Case is a Sepoy of the 108th Infantry, and, as Savars are, if sepoys are soldiers, the City Magistrate has no jurisdiction over him. It therefore appears that the proceedings in the case are void ab initio under Sec" 530 Cr. Pro. Code and it is for consideration if any order of Govt under Sec" 401 Cr. Pro. code is necessary to remit the sentence.

* Extract from the note passed on the case of a Savar - Vide Sl 1 in cover flagged S

Para 6(a) of letter flagged V

2 Regarding the alleged detention of the accused in Police custody for a long time, action will, if approved, be taken in the Police Sec".

3 The other two points referred to in the Commandant Officer's letter - paras 6(b) & (c) - seem to show no violation of law or Standing orders. The summons may have been in Kannada & not in Tamil as stated therein.

Subo for orders.

19-11

16-1-14

CS (48)

19/1/14

Please put up draft of letter to the Dt Magte asking for a report from him as to the case, especially with refee to the Govt Notfn dt 8th Aug 1905

SPOR

19/1

NOTE—Contn. sheet.

G. R. S. 12]

1520.

2133

General and Revenue Secretariat. | 65 File No. 176 of 1913-14

Serial No.	
	5 Draft to the Dist. Mgte of Bangalore & Sub.
	Mg. -116
	19/1/14
	(48)
	19/1/14
fms 6/2	Dy Secy) SOR 20/1
	6 Approved. Issue very early Dmer 21/1
2	To The Dist. Magistrate, Bangalore Dist
	No J 2034 dy 23-1-1914
	Calls for an early report in the matter and enquires under what circumstances the Sepoy was tried by the City Magistrate & whether he acted with jurisdiction in the case
3	From The Same Officer
	No 616 dy 10/12-2-1914
	Forwards the records of the case along with a copy of a letter from the City Magistrate and states that the Police of the City were not given to understand that the Sepoy in question was on duty nor did he claim want of jurisdiction.
	7 Subd.
	Mg -116
	13.2.1914 MM. 8 From the accused's statement before the Magte it is

NOTE—Contn. sheet.

GPB—60,000—7-11-13

Serial No.

clear that he was taking tappal. & so was on duty at the time. At all events there is nothing to show that he was on leave at all. Hence the Mysore Courts have no Jurisdiction over him, under Govt Notfn. dated 7th Aug. 1905 and the proceedings are void for want of Jurisdiction.

Slight amendment in notf no 1598-05-75-06-2 & 12-12-06.

Sui cs 233-13

Q Please put up a draft Order remitting the fine imposed on him under Sec. 401 Cr. P. Code as was done in similar cases (vide 7th Leo 39 & 347 05) and also a draft letter to the Residency intimating the action taken

Sd/ 14/2

Q Two drafts on the lines indicated are Subd. It is a point for consideration whether the amount of fine now proposed to be remitted is to be recovered from the injured person, in case it has been paid to her as ordered by the Magte.

The City Magte intimates that the fine has not been paid to the complainant Hajam

AS. 54 11/2/14

NOTE—Contn. sheet.

GPB—60,000—7-11-13

2530

General and Revenue Secretariat.

C5 File No. 176 of 1913-14

Serial No.	
1	Two drafts are submitted following precedents.
2	I have ascertained by D.O that the ~~compensation~~ fine though received has not yet been paid to the Complt. Perhaps the City Magte may be asked not to disburse the amount pending further orders.
A	Dr Ler) SDR 16/2
3	My drafts as revised may be put up. B draft for A may be proposed Dcm 16/2
4	Both drafts and draft of a.d.o to the City Magte of Bangalore are submd. kg-16 17/2/1914
	Dr Ler) SDR 17/2
5	The d.o may be issued today and the two drafts submitted to the First Member afterwards Dcm 17/2
6	Issue & submit file SDR 17/2
4	To Mr B. S. Ranga Rao, City Magistrate No. J2365 & 17.2.14 Asks him not to disburse amt of fine to the Complainant until further orders. P.C.O.

NOTE—Contn. sheet.

GPB—65,000—17-6-12.

R. S. 12]

General and Revenue Secretariat.

dS File No. 176 of 1913-14

Serial No.

17) Subd. Nee d.O. was issued yesterday

Reg. = 116

18/2/14 MM.

(1st Member) Spdt 18/2

18) The only difficulty in this case is that the Notn of 1905 restricting the jurisdiction of Magistrates was ultra vires, and that the trial & Conviction cannot be held to be illegal I do not know if we are prepared to raise this question. If we may do so, we may point this out. If the Conviction is to be quashed, the proper course is to bring the matter before the Chief Court

Slightly amended in Notf. dt 12.12.06 - S. in dS 233-13

19) I can hardly endorse the action proposed, i.e.

GPB—65,000—17-6-12.

2520

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R. S. 12]

General and Revenue Secretariat. | Cts File No. 176 of 1913—14

Serial No.

to remit the whole fine without saying anything about the validity or invalidity of the trial, as a straightforward course

20) If my view that the Notn about jurisdiction was ultra vires, is not agreed to, the proper course is to apply to the Hh. Ct for revision to test its legality.

21) The money has been ordered to be paid as compensation to the Complainant. It would hardly be fair to nullify this order by refunding the fine to the accused.

Dewan

20/2/14

7789
24.2.14

NOTE—Contn. sheet.

GPB—65,000—17-6-12.

G. R. S. 12]

General and Revenue Secretariat. | Cts File No. 176 of 1913-14

Serial No.

22) I think the Residency may be informed that the Chief Court will be moved to examine the legality of the sentence passed by the City Magistrate on the Sepoy. The District Magistrate may be requested to take early action accordingly. If the First Member approves, orders to this effect may issue and a draft reply to the Residency put up.

3.3.14.

4/3

First Member)

Draft as desired 4/3

(For personal discussion)

23) Submitted with two drafts to the Dt. Magte + the Resr, as settled in personal discussion with the Dy Secy

24) Dy Secy) 9/3

If the cause suggested in the draft is approved and the District Mag. makes the reference to the Chief Court, it may be expected that the latter will issue notices to the parties concerned including the Govt Advocate. At that stage the Govt Adv may be instructed to represent that the proceedings of the Mag. are void unless the Chief Court thinks that the Notification itself is ultra vires

Draft as desired 10/3

25) As desired by the 1st member. Draft

NOTE—Contn. sheet.

GPB—60,000—7-11-13

J 2520

9

[G. R. S. 12]

General and Revenue Secretariat. | Courts File No. 176 of 1913-14

Serial No.

discussed in Conn with the Dep^y Sec^y &
agreed to in Conn respectfully by
1st member
20/3 Draft 13/3 SPR

26) Drafts appd by First member
MCS 12.3.14

Dewan
13/3 Draft 14/3

27) Please issue the enclosed to the D.M. first and then submit the file for taking the Dewan's approval to the draft to the Resident. to be issued today Draft 16/3
SPR

5 To the District Magistrate, Bangalore Dt
no J 2690 dt 16-3-1914
States that the conviction of the Sepoy appears to be illegal and requests the Dist. Magistrate to make a reference to the Chief Court under Sec^t 438 Cr. Pro. Code and report the result obtained.

28 The above communication was sent to the Dist Magistrate. The file is submitted with the draft to the Y.A. Resident as required in para 22 hq-116
17/3/1914 MK Dy Secy.
Dewan) SPR
17/3 Draft Copy 18/3 SPR

8329
18.3.14

29 Dft appd by the Dewan
SR
2-8/3/14.30) Draft today Draft 24/3 SPR 24/3

NOTE—Contn. sheet.

GPB—60,000—7-11-13

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G. R. S. 12]

General and Revenue Secretariat.

Cl. File No. 176 of 1913-14

Serial No.	
6	To the F. A. Resident No 757 Dt 25.3.1914 States with reference to the last that the District Magistrate of Bangalore has been requested to refer the matter for the orders of the Chief Court.
7	From the Dist. Mgte, Bangalore Dist. No 798 Dt 30/31-3-1914 Makes further representation in the matter of the trial of Sripathi Havali, a Sepoy of the 108th Infantry, stating that it is more proper for the Mily authorities to move the Chief Court for a reduction of the fine. 31 Even according to the subsequent notifn. Dt 12th Decr 1908, the City Magistrate had no jurisdiction in the case as he was not "specially authorized by Govt to exercise jurisdiction" in the case. The Dist. Magistrate requests to decide that the Mily authorities having acquiesced in the trial of the orderly by the City Magistrate and having objected only to the severity of the sentence, viz, a fine of Rs 20, it is for the accused to move the Chief Court for a reduction of the sentence. But the Resident has observed that the procedure followed in the case is not in accordance with the

W

Para 1 of Proposal

4 — do —

I paper under disposal

NOTE—Contn. sheet.

GPB—60,000—7-11-13

G. R. S. 12]

General and Revenue Secretariat. | CS File No. 176 of 1913-14

Serial No.

terms agreed upon.

Page 1 in the words flagged x in same place

32 That the accused was on duty at the time he committed the offence is quite clear from his statement before the Magistrate and it therefore seems that the terms of the notification, ~~exempting~~ continuing jurisdiction over soldiers on leave, quoted by the Dist. Magte, do not apply to the present case.

Para 1 of II p. under disposal

33 Accordg to the Residency letter on which the superseding notification jurisdiction has to be "specially ceded."

W

Acting on this view the Residency have in a similar case against some of the sepoys of the X^th Cummumi Hill Column at the instance of the Dist. been requested for permission to try the accused in the State court.

Letter to Res^y under issue

34 In the present case the Resy have already been informed that the matter would be referred to the Chief Court under Sec^n 438 of the Cr. Pro. Code.

35 Subs for orders.

Reg. - 116

3/4/1914 MK 36 None of the reasons now urged by the Dist. Magte have any strong force so as to justify his not giving effect to the direction of Govt

NOTE—Contn. sheet.

GPB—60,000—7-11-13

G. R. S. 12]

General and Revenue Secretariat. | S File No. 176 of 1913-14

Serial No.	
	The notfn of 12th Dec 1906 is practically the same in substance as the earlier notfn of 1905 which it superseded. Under the later notfn also, the Courts in Mysore have no jurisdn to try a native soldier who commits any offence while on duty, unless jurisdn is specially conceded. The jurisdn not having been conceded, the trial of the soldier who was on duty at the time the offence was committed was irregular. That want of jurisdn was not pleaded by the accused, is beside the point, as even according to well recognised rules, want of jurisdn vitiates the whole proceedings.
	2. Moreover the object of Govt in directing a reference to the Chief Court was to test the legality of the notfn of 1906. Besides, we have already written to the Resy that a reference will be made to the Chief Court. The Dy Magte may therefore be requested to give effect to the instructions of Govt
	Dy Secy / SPM 3/4 Dec
38	A draft may be proposed accordingly on 6/4 (Monday) 5/4 SP
	P. T. O.

NOTE—Contn. sheet.

G P B—60,000—7-11-13

3181.
3253

G. R. S. 12]

General and Revenue Secretariat. | Cl. File No. 176 of 1913-14.

Serial No.	
	39. Bapi Bowi Dist. Myte in Tubd. Rg. 116 6/4/1914 NRC
	Dy Secy) S/OR 6/4
	40 The draft refg to the District Map may be approved Dy Secy 6/4 S/R
	First Member)
	41 The Office shd have been careful enough to cite the later Notn — 6/4/14
	42 Issue S/OR 7/4
8	To The Dist. Magistrate, Bangalore No J2924 dy 8-4-1914
	States with refee to 8 & 7 that the matters are in which an authoritative ruling by the Chief Court is desirable and requests him to give effect to the wishes of Govt conveyed in 8 & 7.
9	From the Fr. A. Resident No 2434 dy 7-4-1914.
	Invites refee to 8 & 6 and States that the Resident would be obliged if the Chief Court

P.T.O.

NOTE—Contn. sheet.

G PB—60,000—7-11-13

G. R. S. 12]

General and Revenue Secretariat. — etc File No. 176 of 1913-14

Serial No.

Could be moved to treat the case as very urgent

Subd.

Reg.-116

8/4/1914 WM. 43 The Dist. Magte was requested yesterday to make the reference to the Chief Court & he may be asked to expedite it & the Govt advocate requested to move the Chief Court formally & expedite the consideration of the reference

Dr Seal

Sd/ 8/4

44 A draft may be prepared accordingly

Draft 8/4 SR

45 Two drafts subd.

Reg.-116

9-4-1914 WM.

Dr Seal

Sd/ 9/4

46 Both the drafts may be approved.

Draft approved by law 9/4 SR

First Member)

Drafts appd by First member 11.4.14

MJS

10/4

Order 10/4

47 Issue, the reference to Govt-advocate being marked Confidential

hrs

Sd/ 13/4

10 — To the Dist. Magte, Bangalore Dist

No J2968 Dy 15-4-1914

Request him to expedite the reference to the Chief Court

R. T. O.

NOTE—Contn. sheet.

G P B—60,000—7-11-13

General and Revenue Secretariat.

CS File No. 176 of 1913-14

Serial No.	
11	To The Govt Advocate No J2969 Dy 15-4-14 Requests him to move the Chief Court formally to expedite the consideration of the refee.
12	From The Same Officer No 265 Dy 15-4-1914 States that the refee has been read in the Chief Court and that the result will be intimated in due course. Rec'd. Reg-116 15/4/1914
13	From the D.C., Bangalore Dist No 839 Dy 15-4-1914 States that the refee in Gushan was made to the Chief Court on 8-4-1914 48 Subd. The Govt Advocate was asked to move the Chief Court formally for expediting the consideration of the refee. He may perhaps do so when the refee is posted for consideration. Reg-116 15/4/1914 MM 49. Seen. Please note this in Reg'd-1 Instt files 15/4 Attended to MG.

NOTE—Contn. sheet.

4107 4179

G. R. S. 12]

General and Revenue Secretariat. | C5 File No. 176 of 1913-14

Serial No.	
14	From the Govt Advocate No 384 Dy 20th June 1914 State that the reference regarding the trial of Sreepathy Havali was disposed of by the Chief Court, the conviction having been set aside
15	From the Same Offr No 341 Dy 26.6.1914 Forwards in continuation of the above a copy of the order passed by the Chief Court in the matter 50 Subo with a draft to the H. A. Resident intimating the result of the reference. 51 With regard to the Question whether the Notfn of Dec 06 restricting the jurisdiction in such cases was ultra vires or not, the Chief Court have ruled that the State courts cannot question the legality of the Notfn as it has emanated directly from H. H. the Maharaja. Wg 716 27.6.1914

Para 18 of the Rec Notes

W

B 3/7

12-30

Secy) 29/6

First Member) No draft may be approved Draft & Rec 30/6

Draft appd by First Member 1.7.14

Draft today Draft 2/7

Rec 2/7

NOTE—Contn. sheet.

GPB—60,000—7-11-13

G. R. S. 12]

General and Revenue Secretariat.

To File No. 176 of 1913-14.

Serial No.	
16	The J. A. Resident No. 6 Dy 2-7-14. states that the reference made to the Chief Court has been disposed of and adds that the conviction passed by the City Magistrate of Bangalore has been set aside and that it has been ordered that the fine recovered should be refunded

NOTE—Contn. sheet.

GPB—60,000—7-11-13

Pol & No 1152 & 10.1.1914

III
10/V

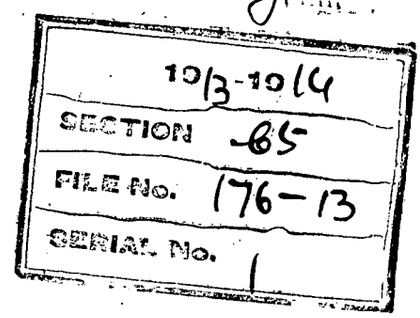
No. 259
& 3.

FROM

13/1/14

P. B. WARBURTON, Esq., I. C. S.,
FIRST ASSISTANT TO THE RESIDENT IN MYSORE.

J. 2133.



To

The Dewan of Mysore.

Dated Bangalore, 10th January 1914.

SIR,

In forwarding herewith a copy of letter No. 344/7/A, dated the 2nd January 1914, with enclosures, from the Station Staff Officer, Bangalore (Brigade), regarding the trial and conviction, by the City -- Magistrate of Bangalore, of an orderly of the 108th Infantry, I am directed to invite your attention to paragraph 3 of this office letter No. 2627, dated the 11th May 1905, and to observe that the procedure -- indicated therein does not appear to have been -- followed in this case. The Resident will be glad to be informed of any action which the Durbar may see fit to take in the matter.

Flags V+T

I have the honour to be,

Sir,

Your most obedient servant,

P B Warburton

First Assistant Resident.

R. O. 2.—R P. B.—12-1913.—500.

Letter No. 344/7/A dated the 2nd January 1914 from the -- Station Staff Officer, Bangalore (Brigade) to the First Assistant Resident in Mysore.

I am directed by the Brigade Commander to forward the -- attached correspondence for such action as you may consider -- necessary. I am to add that he concurs with the views of the -- Officer Commanding 108th Infantry.

@@@@@@@@@

C O P Y.

Registrar,

Mysore Resident's Office.

No. 16/815 Of 1913

Bangalore 20th December 1913

Encl HQS 12643-1

From,

The Officer Commanding

108th Infantry

To,

The Station Staff Officer

Bangalore

Memorandum,

I am forwarding a copy of the Judgment in a case tried before the City Magistrate Bangalore on the 17th instant in which a bicycle orderly of the Battalion was fined Rs. 20/- for colliding with a woman.

Enclosures 7697

1 Copy of Judgement.

2. No evidence seems to have been taken that the latter was seriously injured.

3 The collision, which occured while the orderly was employed in the performance of his Military duties was obviously accidental.

4 In these circumstances and in view of the fact that the sepoy draws only Rs. 11/- permensem, the amount of the fine inflected appears excessive.

Pay Rs/11/0/0.

5 Should the General Officer Commanding concur in this view, I would request that the proper authorities may be moved to have the fine reduced, meanwhile I have paid it under protest.

BANGALORE BRIGADE OFFICE. 22 DEC. 1913

Section.	Regr. No.	Case No.
R	2461	3464

6 Other points I desire to bring to notice are :-

(a) The orderly, though on duty, was detained in police custody, thus causing a delay of several hours in the delivery of the official letters.

It appears that the proper proceedure would have been to take the man's name and number and report the matter to me as C. O. with a view to his being ordered to appear when called on.

(b) The Summons only reached the Regimental Office two days before the date fixed for the hearing of the case and owing to its being sent in Tamil with no English translation, further

4

delay occured in getting it translated , as we have no Tamil speaking men in the Battalion. The consecuence of this was that the accused had no proper time to prepare his defence and no officer of the Regiment could be sent to watch the case on his behalf.

In fact it was only after the hearing of the case ~~on his~~ that I heard the date that had been fixed . otherwise I should of course have applied for a postponement.

(c) After the conviction of the orderly he was detained in police custody and a verbal Message sent to me by the Non-Commissioned Officer who escorted him to the Court, that unless the fine of Rs.20 was paid he would be imprisoned for 3 days.

No record of the conviction was sent me until I applied for it.

F Babcock Lieutenant Colonel

Commandant 108th Infantry

6

and first it was possible for the accused to put on the brake-

and avoid the accident.

According to P.W.2 the accused was going fast.

under sec 56(d) of

the Police Regulation and sentence him to pay a fine of Rupees

twenty and default of payment to suffer eight days simple ~~imprisonment~~

imprisonment

The fine if recovered will be paid to the complainant Muni-

-anna as compensation under sec 545 Cr.Pro.Code.

In open Court.

(Sd)B.Venkoba Rao

City Magistrate

Bangalore.

Dated 17th December 1.

"Copy"

City Magistrate

Bangalore.

Calling for report in the matter of the trial of a soldier by Summary Court

G. R. S. 26] File No. 176-13

Serial No. 2

Diary No. of letter replied to 2133

No. J 2034 Encl

General and Revenue Secretariat

( )

, *the* 191 .

To

The Dist. Magistrate

Bangalore Dist.

Date of issue 23-1-14

Signed by S.P. Rajagopalachariar

Sir,

I am directed to forward herewith copy letter no 16/875 of 1913, & the 20th Dec 1913, from the Officer Commanding, 108th Infantry, to the Station Staff Officer, Bangalore, regarding the trial and conviction of a Sepoy of the Battalion and to request that a report may be in the matter

M. over.

To be obligingly returned with the report called for

SUBJECT.

7

as early as possible 2 I am to invite
Sent up to Govt: ~~xxxxxxxxxxxx~~
your attention
~~especially with refce~~ to Govt
Memo no J 418/6535-04-4
of the 8th August 1905 and to request to be informed ~~Your~~
under what circumstances
the report (who was not on leave
was made by the
Collr Magte & whether he
acted with
~~had~~ sanction ~~to keep him~~
~~in close confinement~~ on the case.

I have &c

Jon

For Secy to Govt

21/

Leg.—116

19/1/14

(HS)
19/1/14

Exd.
(GB)
24/1/14

List of enclosures,

Copied by 21/1/14

Examined by

GPB—25,000—8-8-11.

8

Office of the Deputy Commissioner,

Bangalore District.

Dated Bangalore, 10th February 1914.

No. 616
Record. Price. 1 required letter 1 copy

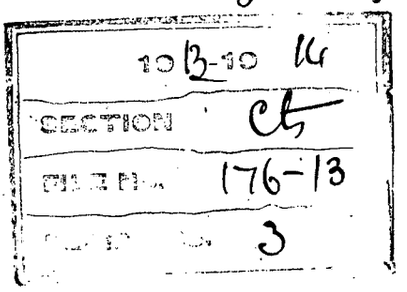
From

K.Chandy Esq., B.A.,

Deputy Commissioner,

Bangalore District.

12
J 2520.



To

K.R.Sreenivasa Iyengar Esq.,M.A.,

Secretary to the Government of H.H.

the Maharaja of Mysore, Genl and Rev.Depts.

Sir,

With reference to your letter No.J.2039/Cts.176-13-2 of the 23rd January 1914, calling for a report in the matter of the trial of Sreepathy Havali, Sepoy of the 108th Infantry, I have the honor to submit herewith the records in Criminal case No.256/339 of 1913-14 on the file of the City Magistrate's Court of Bangalore, the correspondence ending with Police Chief Inspector's No.805 of the 5th February 1914 and copy of letter No.418 of the 6th idem from the City Magistrate. It will be seen from the above that the Police of the city did not understand that the Sepoy in question was on duty at the time the offence was committed, nor did he claim that he should be handed over to his Regiment. The summons was sent for service through the Commanding Officer of the Regiment, who "ordered the accused to attend the Court and made no protest at the time". The above facts seem to have led to the mistake.

2. The Commanding Officer's letter dated 20th December 1913 received with your letter under reply is herewith returned as requested.

I have the honor to be
Sir,
Your most obedient servant.

for Deputy Commissioner,
Bangalore District.

absent from station

III

From 13/2 191

The Deputy Commissioner

Bangalore District

To

The Secretary to Government

General & Rev Department

Dated 10.2.16

Despatched 12.2.16.

Received

General No. F 511.

No.

Enclosure No. ~~F 61~~ 4.

Report in the matter of the trial of Subadhar Havaldi Sepoy of the 108th Infantry

Letter No.418 dated 6th February 1914, from the City Magistrate, Bangalore, to the District Magistrate, Bangalore District.

Encl to GOs 176-13-3

With reference to your No.R.4475 dated 24th Ultimo regarding the trail of Sreepathy Havali, I have the honor to forward herewith the records in criminal case No.256/339 of 13/14 together with the report No.805 dated 5th February 1914, received from the Chief Inspector of Police, Bangalore City, in the matter and to state that from the records it seems that the Police placed the charge sheet before the Court and the Commandin officer of the Regiment ordered the accused ~~the accused~~ to -- attend the Court and made no protest at the time a Summons was sent to the accused through him. The accused made a statement in which he neither called evidence nor pleaded want of jurisdiction.

The case therefore seems to have been disposed of promptly like all Police Regulation cases as the question of Jurisdiction did not arise

The Commanding Officer says that the Summons was in Tamil. As a matter of fact it was in Kanarese.

"C O P Y"

For Deputy Commissioner, &
District Magistrate.

3 dfs

40

C. R. S. 26]

17/2

Diary No. of letter replied to

General and Revenue Secretariat

( )

, the 191 .

Date of issue 17/2/14

Signed by SP Rajagopalachari
Sgt

C5 File No. 176-13

Serial No. 64.

Directing that the fine may not be disbursed until further orders

No. J2365

To

Dear Sir,

I am desired to
to the complainant until further orders
request you not to disburse the amount
of fine received from one Sripathi
Hawali, an orderly of the 108th Infantry,
who was convicted by the City Magistrate
of Bangalore in Crl case no 256/339 of
1913-14 on his file.

Yours Sincerely

Sgt

Dmr
17/2

To

B. S. Ranga Rao Esq BA

City Magistrate, Bangalore

over.

Mg.-116
17-2-1914

SUBJECT.

MM
17-2-14

G. R. S. 26]

C5 File No. 176-13
Serial No. 5

2 drafts

Diary No. of letter replied to

No. J 2690

General and Revenue Secretariat
( )
, *the* 191 .

To
The Dt Magistrate
Bangalore Dt

Date of issue 8 16.3.14

Signed by S.P. Rajagopalachari
Supdt

Sir

I am directed to acknowledge the receipt of your letter No J 616 dt 10/12 th Feby 1914 regarding the trial of one Sheepathi Havali, Sepoy of the 108th Infantry in the Court of the City Magte Bangalore, and to state that,

over.

SUBJECT.

12

Under existing Standing orders, ~~[illegible]~~ (vide Notifn No J 418 dt 8-8-1905) the City Magte had no Jurisdn to try the accused, a native Soldier ~~on~~ on duty at the time he is alleged to have committed the Offence and ~~that~~ his Conviction ~~therefore~~ therefore appears to be illegal.

J 1593-15

Sentence executed in Prison

75-63-2 dt 12-12-16

That being so, Govt ~~consider~~ it is not clear why ~~that~~ a reference ~~might have~~ was not ~~been~~ made by you as Dt Magte, to the Chief Court under Sec 438 of the Cr Pro. Code. I am now to request you, to ~~make~~ ~~the~~ ~~your~~ ~~Sec~~ ~~reference~~ ~~recommendation~~ ~~objection~~, (if necessary) to make ~~the~~ ~~reference~~ reference to the Chief Court at an early date and to report the result to Govt. ~~with~~ ~~your~~ ~~reasons~~ ~~necessary~~ ~~objection~~ ~~for~~ ~~not~~ ~~making~~ ~~reference~~ (if) I have

List of enclosures.

12/3/14

Copied by

Examined by

Sent to Dist

Dated 1913

GPB—25,000—8-8-11.

3

13

G. R. S. 26]

16/3
2520

2 drafts

File No. 176-13
Serial No. 6

Diary No. of letter replied to

P&C No. 757.

General and Revenue Secretariat
( )
, *the* 191 .

To The 1st Asst to the Hon'ble the Resident in Mysore,

Date of issue 25. 3. 14

Signed by Mr K. R. Srinivasaiyangar

Sir,

I am directed to acknowledge the receipt of your letter No 259 dt 10-1-1914 regarding the trial & conviction by the City Magte of Bangalore, of an orderly of the 108th Infantry and to state that the Dt Magte, Bangalore

over.

SUBJECT.

4

District has been requested to refer the matter for the orders of the Chief Court under Sec. 438 of the Cr. Pro. Code

I have etc

12/3/14

Sd/ Secy to Govt

1693

do

23.3.14

List of enclosures.

Copied by

Examined by N.

• GPB—25,000—8-8-11.

15

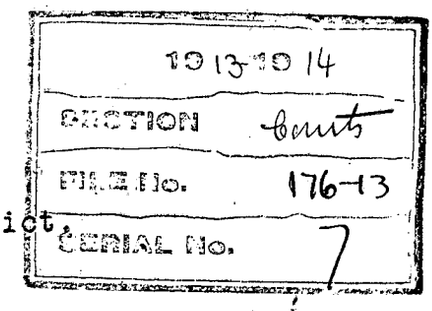
Office of the District Magistrate,

Bangalore District.

Dated Bangalore, 30th March 1914.

No. 2798

DIARY Bd. J. 3181



From

K.Chandy Esq.,B.A.,

District Magistrate,

Bangalore District.

To

K.R.Srinivasa Iyengar Esq.,M.A.,

Secretary to the Government of H.H.

the Maharaja of Mysore, Genl. and Rev.Depts.

Sir,

With reference to your letter No.J.2690/Cts.176-13-5 of the 16th March 1914, and Docket No.J.2805 of the 26th March 1914, regarding the trial of one Sripathi Havali, Sepoy of the 108th Infantry in the Bangalore City Magistrate's Court, I have the honor to state that the Government NotificationNo. J.418 of the 8th August 1905 quoted by you has been superseded by Government Notification No.J.1598/Cts.75-06-2 dated the 11th December 1906 published in the Mysore Gazette, dated the 3rd January 1907. According to this latter order "the Courts of the Mysore State are not debarred from exercising jurisdiction in the case of a Native Officer or Soldier of the Indian Army, who, while on leave within the State, commits within the State an offence of any kind against the Law of the State". In the case under reference, the accused Sreepathi Havali on his committing the offence under section 56(b) and (d) of the Police Regulation on the 10th December 1913, was not detained in the Police custody, but allowed to go on his way on his executing a "Mutchalika" to appear at the Yelehanka Gate Police Station on the following day. The accused summons issued by the City Magistrate's Court on the 12th December 1913, requiring the attendance of the accused in the Court on the 17th idem was sent to the Commanding Officer on the same day (i.e.

(i.e. the 12th December 1913) with a covering letter and was returned duly signed by that Officer with his letter No.571 A of the 16th December 1913. I have also ascertained from the court clerk of the City Magistrate's Court that some officer of the Infantry was standing by the side of Sripathi Hawali while he was in the dock. The above fact has been admitted by the Commandant of the 108th -- Infantry in his letter No.16/815 dated 20th December 1913 addressed to the Station Staff Officer. It will thus be seen that the accused Sreepathi Havali, or any officer of the Infantry to which he belongs, had ample opportunities to represent to the court that he was "on duty" and that he wanted to be handed over to the Military Authority. The non-representation of anything of the sort above referred to, from the beginning to the end, clearly shows that the Military Authorities did not object to the Sepoy being tried by a court of the State.

2. In the recent Buckingham Stephans case (a case of murder), the High Court in Travancore, held that the party not having raised the plea of want of jurisdiction in time - was not entitled to raise it subsequently.

3. As regards point (b) in the Commanding Officer's letter, it is not stated that any adjournment was asked for, which if requested would no doubt have been granted.

4. It may also be submitted that the Commanding Officer chiefly objects to the amount of the fine and wants "that the proper authorities may be moved to have the fine reduced". The proper authority appears in this case to be the Chief Court. In case the Military Authorities move the Chief Court for a reduction of the fine, Government may, if so advised, direct the Government Advocate not to oppose the motion. There is still plenty of time for such an application being made.

5. If Government still consider that a reference under section 438 Criminal Procedure Code should be made by me

17

me as District Magistrate, I shall do so.

6. The two files received with your docket dated 26th March 1914 are herewith submitted for reference and -- obliging return when done with.

I have the honor to be,

Sir,

Your most obedient servant.

District Magistrate,
Bangalore District.

145

L.S.R.
1.

Re trial of a Sepoy of the 108th Infantry

1.8

G.R.S. 26]

7/4

File No. 176-13

Serial No. 8

Diary No. of letter replied to

No. J 2924 Genl Reds

General and Revenue Secretariat

( )

, the 19 .

To

The Dist. Magistrate,

Bangalore

Issue 8/4/14

Sir,

Signed by Sd. Rajagopalachari Esq.

Adverting to correspondence ending with your letter no. 798 of the 30th Mar 1914, regarding the trial of one Sipathi Havali by the City Magistrate of Bangalore, I am directed to request you to be so good as to give effect to the instructions of Govt conveyed in their office letter No J 2690/Jud 176-13-5 of the 16th Mar 1914.

P.T. over.

I Paper under Appeal

State that the matter is one in which an authoritative ruling by the Chief Court is desirable and

SUBJECT.

19 The Notn of 1905 was referred to by over
sight for Notn of 1898 d. 12-12-1906, which was
the enclosure rec'd with yours the order that
Govt had in view.
letter under reply are herewith
returned.

Thanks

6/4/14

JM

Dwn 6/4

for Secy to Govt

Ng-116

6/4/1914 MC

List of enclosures,

Copied by KT 6/4

Examined by M

GPB—10,000—28-2-11.

20

Urgent

No. 2434.

Pol 20 1734 7.4.1914.

FROM

P. B. WARBURTON, Esq., I. C. S.,
FIRST ASSISTANT TO THE RESIDENT IN MYSORE.

DIARY No. F325

1913-1914
SECTION C5
FILE No. 176-13
SERIAL No. 9

To

The Dewan of Mysore.

Dated Bangalore, 7th April 1914

SIR,

I am directed to invite a reference to Mr. Srinivasiengar's letter No. 757, dated the 24th/25th March 1914, in regard to the trial, by the City Magistrate of Bangalore, of an orderly of the 108th Infantry.

2. The matter is one in which the military authorities ask for a very early decision and the Resident would be obliged if the Chief Court could be moved to treat the case as very urgent.

I have the honour to be,
Sir,
Your most obedient servant,

M B Warburton

First Assistant Resident.

R. O. 2.—R P. B.—3-1914.—1,000.

T Woodhis 21

G.R.S. 26]

File No. 176-13

Serial No. 10

Diary No. of letter replied to

No. J 2968

General and Revenue Secretariat

( )

, *the* 19 .

To

The District Magistrate,

Bangalore dist,

ssue 15-4-14

Signed by Mr S P Rajagopalachar

Sir,

In continuation of correspondence ending with this office letter no J 2924/16 176-13-0 Dy 8-4-1914, I am directed to request you to expedite the reference to the felicy court regarding the trial of Sripathi Havali by the City Magistrate of Bangalore as the matter is one in which a very early decision

P.T. over.

SUBJECT.

22

is desired. A report may be made to Govt as soon as the report is sent up to the Ch. Court

Thanks

Govt

for Leg. Secy

16/4/14

Leg. 716

9/4/1914

List of enclosures,

Copied by

Examined by

GPB—10,000—28-2-11.

23

1911

Woods

G.R.S. 26]

C/S Fil No. 176-13

Serial 11

Diary No. of letter replied to

Confidential

No. } 2969

General and Revenue Secretariat

( )

19 .

To

The Govt Advocate

15-6-14

Signed by Mr SPRajagopalachar

Sir,

I am directed to state that one Sripathi Havali, a Sepoy of the 108th Infantry was tried and convicted by the City Magistrate of Bangalore for an offence under Sec" 56 of the Mysore Police Regulation. A under rept. no. J15-98/13 75-06-2 of the 11th Dec" 06 the City Magistrate has no jurisdiction over the said sepoy,

P.T. over.

W

SUBJECT.

BV

24.

Stated to have been on duty at the time he is alleged to have committed the offence, the District Magistrate of Bangalore has been requested to make a reference to the Chief Court under Sec. 438 of the Code of Crl. Procedure in order to obtain an authoritative ruling by the Chief Court as to whether the accused proceedings of the Magistrate are void or voidable in the circumstances referred to.

I am now to request you to be so good as to move the Chief Court formally, as soon as the Dist. Mgte makes the said reference, to expedite the consideration thereof as an early decision is desired by Govt in the matter

List of enclosures,

I have to

For Secy to Govt

11/4/14

Copied by

Examined by

Mg. 716

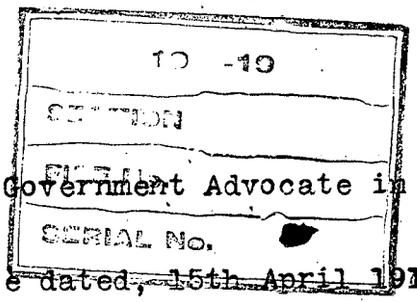
9/4/1914

GPB—10,000—28-2-11.

Confidential.

DIARY No. J.3334. 25

III
15/4/14 No. 265.



Office of the Government Advocate in Mysore,

Bangalore dated, 15th April 1914.

nt

cts 176-13-12

From,

C. S. Doraswamy Iyer Esq., B.A., B.L.,

Government Advocate in Mysore, Bangalore.

To,

The Secretary to the Government of H.H. the Maha-Raja of Mysore, General & Revenue Departments.

Sir,

In acknowledging receipt of your letter No.J 2969/Cts.176-13-11 of this date, I have the honour to -- state that it is ascertained that a reference from the - District Magistrate, Bangalore, on the subject, has been received in the Chief Court and that the same has been - submitted to Mr. Justice Wallace for orders.

2. The result of the reference will be intimated in due course.

I have the honour to be,

Sir,

Your most obedient servant,

C Doraswamy Iyer

Government Advocate.

Immediate.

Office of the Deputy Commissioner,
Bangalore District.
Dated Bangalore, 15th April 1914.

No.----

DIARY No. J 3335

10/3-10/4
SECTION 85
FILE No. 176-13
SERIAL No. 13

From

K.Chandy Esq.,B.A.,
District Magistrate,
Bangalore District.

To

K.R.Sreenivasa Iyengar Esq.,M.A.,
Secretary to the Government of H.H.
the Maharaja of Mysore, Genl. and Rev.Depts.

Sir,

With reference to your letter No.J.2968/Cts.176-13-10 of the 15th instant, enquiring whether a reference to the Chief Court regarding the trial of Sepoy Sripathi Havali -- has been made to the Chief Court, I have the honor to state that the Chief Court was written to in this office letter No. R.5907 dated 8th April 1914, i.e. the very day on which the Government letter was received here.

2. The reference to the Chief Court was marked Immediate.

I have the honor to be
Sir,
Your most obedient servant.

K.Chandy

District Magistrate,
Bangalore District.

KC.

L.S.R
1.

111
15/H

From 191

The Deputy Commissioner

Bangalore District

To

The Secretary to Government

General & Rev Depts

Dated

Despatched 15-4-14.

Received

General No. 1839.

No.

Enclosure No.

States that the Chief Comm

was written to re. the treat

Sympathy Harali

GPB—50,000—26-9-12

III 20/6 No. 334.

Urgent.

DIARY No. J 4103

27

1913-19 14
SECTION 65
FILE No. 176 of 1913
SERIAL No. 14

Office of the Government Advocate in Mysore,

Bangalore dated, 20th June 1914.

From,

C. S. Doraswamy Iyer Esq., B.A., B.L.,
Government Advocate in Mysore, Bangalore.

To,

The Offg: Secretary to the Government of His Highness
the Maharaja of Mysore, General & Revenue Departments.

Sir,

In continuation of this office No.308 dated 25th May 1914, reporting that the reference of the District Magistrate, Bangalore to the Chief Court, re: Sreepathy Havali a sepoy of the 108th Infantry, has been posted for hearing on 16th June 1914, I have the honor to state that the reference coming on for hearing on the 18th, the Honourable Judges have set aside the conviction passed by the City Magistrate, and have ordered the fine recovered to be refunded.

2. A copy of the judgment in the case has bee applied for and the same will be forwarded in due course.

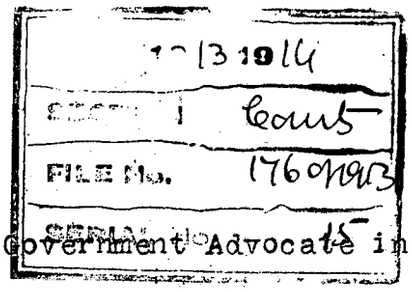
I have the honor to be,
Sir,
Your most obedient servant,

C Doraswamy Iyer

Government Advocate.

No. J 4179

28



Office of the Government Advocate in Mysore,

Bangalore dated, 26th June 1914.

From,

C. S. Doraswamy Iyer Esq., B.A., B.L.,
Government Advocate in Mysore, Bangalore.

To,

The Offg: Secretary to the Government of His Highness
the Maharaja of Mysore, General & Revenue Deptts

Sir,

In continuation of this office No.334 dated 20th Instant, I have the honour to forward herewith a copy of the order passed in Criminal Revision Case No.71 of 1913/14 on the file of the Chief Court—Re: Sreepathy Havali a Sepoy of the 108th Infantry.

I have the honour to be,

Sir,

Your most obedient servant,

C Doraswamy Iyer

Government Advocate.

29

IN THE CHIEF COURT OF MYSORE AT BANGALORE.

Thursday, the 18th day of June 1914.

Tech Ex 176-13-15

P R E S E N T

Mr. Justice K. S. Chandrasekhara Aiyar

and

Mr. Justice E. H. Wallace.

Criminal Revision Case No: 71 of 1913-14

In the matter of a reference by the District Magistrate of Bangalore in the case of Sripati Havali, accused in Criminal Case No: 256/339 of 1913-14 on the file of the City Magistrate of Bangalore.

(Offence under Section 56(d) of the Mysore Police Regulation).

O R D E R

This is a reference made by the District Magistrate of Bangalore at the instance of the Government, in a case in which one Sripathi Havali was convicted by the City Magistrate of Bangalore of an offence under Section 56(b) of the Mysore Police Regulation.

The Police Report in the case describes the accused as a bicycle orderly sepoy in the 108th Infantry; and the accused has in his statement before the Magistrate mentioned that at the time that the collision occurred he was "taking tappal," that is to say, that he was on duty at the time. That being so, and there being nothing to negative the truth of the said description, the fact that the accused did not specifically raise a plea of want of jurisdiction could not give to the Magistrate a jurisdiction to entertain the case if he did not otherwise possess it.

Now, it is declared in notification No: J 1598-Cts 75-06-2 dated the 11th December 1906 that the courts of the State shall not, except where specially authorised by Government to do so (and there is no allegation of any such special authority in the present case), exercise jurisdiction over a Native Officer or Soldier of the Indian Army who, while not on leave, commits any kind of offence within the State. This notification does not purport to have been issued by the Government of Mysore in virtue of an enabling provision containing any enactment, but has emanated directly from His Highness the Maharaja of Mysore, apparently as a sovereign authority for the State and the source of all

31

legislative power therein. Consequently there is no question here as to the legality or otherwise of such a notification, and it would not be competent to any of the State courts to raise such a question.

The case of the accused comes clearly within the above notification since he was at the time of the occurrence a native soldier of the Indian Army and was not on leave. Consequently, the trial before the City Magistrate, was without jurisdiction, and the conviction and sentence must be set aside as illegal. The fine if any levied must be refunded.

SD/.K.S.Chandrasekhara Iyer.

J U D G E.

SD/. E. H. W a l l a c e.

J U D G E.

H.C.C.

ab 32

G. R. S. 26] 2/7 4179

File No. 176 of 1913
Serial No. 16

Diary No. of letter replied to

Pol No. 6

General and Revenue Secretariat
( )
, the *191* .

To
The H. A. Resident

Date of issue 2. 7. 1914

Sir,

Signed by Mr. D. M. Narasinga Rao

In continuation of correspondence ending with this office letter no 978 dated the 3rd June 1914 regarding the trial and conviction of Sreepathi Havali, a sepoy of the 108th Infantry I am directed to state that the reference made to the Chief Court has been disposed of. The conviction passed by the City Magistrate of Bangalore has been set aside and it has been ordered

Vide judgment pages 7

M over.

SUBJECT.

9/7/14

33

that the fine received should be refunded.

I have te

SPR — Dtd 30/6 — OHG: Seq Asst Sec

11/7/14

Leg. 116 27-6-14

List of enclosures.

Copied by

Examined by

GPB—25,000—4-3-13